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Written statement* submitted by the International Bar Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The role of the Universal Periodic Review in advancing human rights in the administration of justice

The international environment has evolved and old and new human rights mechanisms face the challenge of complementing one another. At the same time, the renewed international agenda, defined by the 2015 Sustainable Development Goals, incorporates human rights across the board, and 'access to justice for all' is a goal in itself under Goal 16.[1] As a result, the work of international human rights mechanisms will be, even more than before, complementary to the monitoring undertaken by the United Nations (UN) development agencies.

In this context, the contribution of the Universal Periodic Review (UPR) could be unique. The UPR has indeed opened up the international human rights system to non-state actors in an unprecedented manner. It is as such a *sui generis* human rights mechanism, where the involvement of the primary stakeholders constitutes the best guarantee of impact on the ground.

The 2016 report of the International Bar Association's Human Rights Institute (IBAHRI) *The role of the UPR in advancing human rights in the administration of justice*[2] addresses two inter-related issues, namely the involvement of legal professionals in UN human rights mechanisms and the recognised place for legal professionals in international recommendations. The report advocates for the involvement of legal professionals at the UPR as a key condition to foster the impact of the process on the administration of justice. The report identifies a number of challenges that need to be addressed for the UPR to realise its full potential.

Recommending states face major challenges, not least to give necessary attention to legal professionals, in accordance with their role and the specific protection recognised for them in international law. The role of legal professionals in the protection of human rights, and their need for specific protection, were put as key priorities on the international human rights agenda three decades ago. While over the last 20 years the Special Rapporteur on the Independence of Judges and Lawyers has evidenced the need for further compliance with the UN Basic Principles on the Role of Lawyers, the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors—a need more recently echoed by resolutions of the Human Rights Council—, the UPR recommendations have until now barely mentioned the specific status and need for protection of legal professionals.

The main challenge facing recommending states is to draft specific and action-oriented recommendations that pinpoint specific shortcomings in the justice system, borrow the agreed international human rights language and build upon the current international human rights framework. Only a few states have so far referred to the UN Basic Principles and Guidelines. Similarly, only a few states have echoed the recommendations and good practices identified by the special rapporteurs in the administration of justice. The right to freedom of expression, assembly and association for legal professionals are key conditions for the independence of justice systems, but these have almost never been addressed. Professional organisations of lawyers – bar associations or law societies – have rarely been mentioned, even though they should be counted amongst the primary institutions of the country charged with the protection of human rights. These organisations should be entrusted with the role of ensuring the protection and education of lawyers in order to promote the rule of law and an independent court system. The involvement of lawyers in law reform and the fight against impunity has never been addressed, even though it could facilitate informed legal debates, sustainable democratic change and consistency within legal systems.

For the UPR to be counted among human rights mechanisms, UPR recommendations must be guided by the core human rights principles of non-discrimination, participation, access to information, and accountability. This is true for all governance sectors, including the administration of justice. Thus the Special Rapporteur on the Independence of Judges and Lawyers has recommended that the judiciary should be appointed in a participatory and transparent manner; it should be representative of the minorities in the country; and it should integrate a gender-based approach. Specific recommendations that depart from the international human rights framework lose their potential for impact. Specific recommendations can only trigger change if the legal and policy environment where they are implemented actively

[1] Under Goal 16, states envision to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'.

[2] The IBAHRI report *The role of the Universal Periodic Review in advancing human rights in the administration of justice* will be available from 17 March 2016 at: http://tinyurl.com/jxwd42f

enables the enjoyment of human rights. A recommendation to train legal professionals in human rights, or appoint judges in an objective and transparent manner, will only be meaningful if the state is also being asked more broadly to comply with the UN Basic Principles, Guidelines and other relevant international human rights instruments.

The main challenge facing states under review is for them to develop a monitoring system that focuses on the impact of measures they implement within the justice system regarding the realisation of human rights in the country, and to support a self-performance assessment process by the legal profession. Out of a sample of specific, action-oriented recommendations, the IBAHRI found no information on the implementation of almost 40% of these recommendations, and the monitoring most often found addressed the measures implemented rather than the actual impact on the administration of justice or access to justice. The absence of implementation or reporting guidelines on the administration of justice is a problem that goes beyond the UPR. Notwithstanding the UN Rule of Law indicators, there is currently no UN monitoring system to measure adherence to international standards on the independence of justice. The IBAHRI therefore encourages states to use the UN Rule of Law indicators and set up a monitoring system based on the UN Basic Principles and Guidelines in order to monitor progress in realising access to justice for all, as targeted by the Sustainable Development Goal 16 which was adopted by all UN Member states in September 2015.

Once international recommendations are lifted to the level of protection spelled out in international standards and as currently interpreted by the other human rights mechanisms, the UPR will be able to effectively play its role and foster exchanges on good practice. In that respect, international organisations of legal professionals also share a responsibility in the development of good practices. In 2007, Special Rapporteur Leandro Despouy encouraged the Human Rights Council to *'draw on the contributions and experience of national and international jurists' organizations established to defend judicial independence'*.[3] Good practices in key areas such as training programmes, the protection of legal professionals and the fight against corruption within the justice system will be among the main issues to address if the UPR process is to foster human rights in the administration of justice. Training material and education programmes are at the core of the activities of many international legal organisations and there are lessons to be learned from this wealth of experience. The IBAHRI is due to release a manual compiling current practice in the establishment and functioning of professional organisations of lawyers. Further guidance is currently being developed, especially by the IBAHRI and the ICJ, on judicial integrity and judicial accountability. The IBAHRI is committed to fostering the involvement of lawyers in UN human rights mechanisms and in monitoring the independence of judges, lawyers and prosecutors at country level. It is also committed to fostering exchanges between lawyers' organisations in order to encourage the development of good practices.

In light of the findings presented in this Report, the IBAHRI makes the following recommendations with a view to improving the UPR mechanism and ensuring that relevant stakeholders and appropriate standards inform that process and recommendations by states.

To recommending states

1. When assessing a state's human rights situation, pay specific attention to the information coming from lawyers' associations.

2. Consider the separation of powers and the independence of legal professionals as priority issues to be addressed at the UPR as a necessary requisite for the protection of all human rights.

3. When making recommendations, refer to the UN Basic Principles and Guidelines and prior recommendations and good practices in the administration of justice as identified by international human rights mechanisms, especially the Special Rapporteur on the independence of judges and lawyers.

4. Call for judges, prosecutors and lawyers to be recognised as subjects of specific protection measures to ensure that they carry out their professional duties without any external or internal interference.

5. Call for the administration of justice to be transparent, accessible to all (through the provision of legal aid where necessary), participatory, and representative of the population it serves as a requirement to ensure access to justice by vulnerable groups.

[3] Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy (2007) UN Doc. A/HRC/4/25 p 2.

6. Call for states under review to allocate material and financial resources to the justice system, and ensure that the judiciary be given an active involvement in the preparation of its budget and enjoy autonomy in the allocation of its resources, while remaining accountable to the other branches of power for any misuse.

7. Call for a national independent, self-governed and self-regulatory bar association to be the primary institution charged with protecting the legal profession and fostering lawyers' engagement in the protection of the rule of law and human rights.

8. Call for the legal community to receive continuous legal training on key human rights issues encountered in the country, following the recommendations of the Special Rapporteur in the 2010 annual report 14/26, *and* to be involved in the law reform, especially in the revision of criminal legislation.

9. Call for the independence of prosecutors and the respect of international human rights standards in the fight against impunity and terrorism.

10. Cooperate with the state under review to implement the UPR recommendations.

To states under review

11. Involve the judiciary and professional organisations of lawyers in the implementation and monitoring of international human rights recommendations, including the UPR recommendations, especially relating to the administration of justice and legal reforms.

12. Use the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the role of prosecutors as benchmarks for the implementation of the UPR recommendations relating to the administration of justice.

13. Refer to the landmark cases of the highest judicial instances concerning human rights held in your country, while reporting to the UPR.

To lawyers and lawyers' associations

14. Use the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors and the recommendations of the Special rapporteur in order to monitor the independence of judges and lawyers in the country.

15. Monitor the independence of the judiciary and independence of lawyers and prosecutors in the country and take part in the UPR process.

16. Foster exchanges on human rights issues and related case law between national bar associations and members of the judiciary, especially between countries receiving similar recommendations at the UPR.

To the Office of the High Commissioner for Human Rights (OHCHR)

17. Disseminate the United Nations Rule of Law Indicators in order to assist states and NGOs in the monitoring of human rights in the administration of justice.

18. Foster the use of reporting guidelines at the UPR by states and NGOs.